

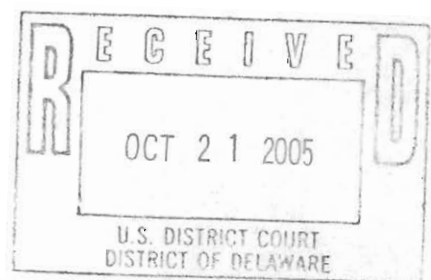
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,

v.

CA. No. 04-1350(GMS)

DR. SYLVIA FOSTER, STAFF
MEMBERS, THE DELAWARE
PSYCHIATRIC CENTER AND
MR. GREY,



MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR THE APPOINTMENT OF COUNSEL

COMES NOW, THE PLAINTIFF JIMMIE LEWIS, PRO-SE,
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR THE
APPOINTMENT OF COUNSEL, IN SUPPORT THEREOF ASSERTS
THE FOLLOWING:

THIS IS A CIVIL ACTION CASE FILED UNDER 42 U.S.C. § 1983
BY A LITIGANT WHO'S COMPLAINT CLAIMS THE DEFENDANTS
COMMITTED NUMEROUS STATUTORY AND CONSTITUTIONAL
VIOLATIONS AGAINST HIM WHILE BEING HOUSED AT THE
DELAWARE PSYCHIATRIC CENTER, BY SEVERAL PSYCHIATRIST,
PHYSICIANS, NURSES, NURSE ASSISTANTS, SOCIAL WORKER,
PSYCHOLOGIST, AND ADMINISTRATORS. THE PLAINTIFF SEEKS
DAMAGES FOR ALL CLAIMS, AND A PRELIMINARY INJUNCTION TO
ENSURE PROPER PSYCHOLOGICAL TREATMENT, MEDICAL TREATMENT,
AND TO INFORM THE SUPERIOR COURT OF SAID VIOLATIONS.

ARGUMENT

1.)

IN DECIDING WHETHER TO APPOINT COUNSEL FOR AN INDIGENT LITIGANT, THE COURT SHOULD CONSIDER "THE FACTUAL COMPLEXITY OF THE CASE, THE ABILITY OF THE INDIGENT TO INVESTIGATE THE FACTS, THE EXISTENCE OF CONFLICTING TESTIMONY, THE ABILITY OF THE INDIGENT TO PRESENT HIS CLAIM". *ABDULLAH V. GUNTER*, 949 F.2d - 1032, 1035 (8TH CIR. 1991) (CITATION OMITTED), CERT. DENIED, 112 S. CT 1995 (1992).

IN ADDITION, COURTS HAVE SUGGESTED THAT THE MOST IMPORTANT FACTOR IS WHETHER THE CASE APPEARS TO HAVE MERIT. *COOPER V. A. SARGENTI CO., INC.*, 877 F.2d 170, 173 (2D CIR. 1989). EACH OF THESE FACTORS WEIGHS IN FAVOR OF APPOINTING COUNSEL IN THIS CASE.

2.) "FACTUAL COMPLEXITY". THE COMPLAINT CLAIMS NUMEROUS ~~DELAWAR~~ STATUTORY VIOLATIONS AND CONSTITUTIONAL DENIALS COMMITTED AGAINST HIM BY MORE THAN TWENTY DEFENDANTS UNDER COLOR OF LAW 11 DEL C 468 AT THE DELAWARE PSYCHIATRIC CENTER, IN WHICH MAY VERY WELL BEEM MEDICAL EXPERT WITNESSES AND OR THE CROSS EXAMINATION OF MEDICAL WITNESSES CALLED BY THE DEFENDANTS OR BOTH. THE PRESENCE COMPLEX MEDICAL WITNESSES AND OR OTHER COMPLEX ISSUES REQUIRING EXPERT TESTIMONY, SUPPORT THE APPOINTMENT OF COUNSEL. *MOORE V. MABUS*, 976 F.2d 268, 272 (5TH CIR. 1992); *JACKSON V. COUNTY OF MCLEAN* 953 F.2d 1070, 1073 (7TH CIR. 1992); *TUCKER V. RANDALL*, 948 F.2d 388, 392 (7TH CIR. 1991).

3.) "THE PLAINTIFF'S ABILITY TO INVESTIGATE"

THE PLAINTIFF IS IN THE SAME SITUATION AS AN INMATE WHO HAS BEEN TRANSFERRED TO A DIFFERENT INSTITUTION, A FACTOR THAT NUMEROUS COURTS HAVE CITED IN APPOINTING COUNSEL. TUCKER V. RANDALL, - 948 F.2d 388, 391-92 (7TH CIR. 1991); -

GATSON V. COUGHLIN, 679 F.SUPP. 270, 273 (W.D.NY 1988), ARMSTRONG V. SNYDER, 103 F.R.D. 96, 105 (E.D.WIS 1984).

IN ADDITION, THIS CASE WILL REQUIRE CONSIDERABLE DISCOVERY CONCERNING THE IDENTITY OF WITNESSES, INCIDENT REPORTS, MEDICAL NOTES, DOCUMENTS, MEDICAL REPORTS AND RECORDS, ETC, ETC. SEE, TUCKER V. DICKEY, 613 F. SUPP. 1124, 1133-34 (W.D.WIS 1985); NEED FOR DISCOVER, SUPPORTED APPOINTMENT OF COUNSEL.

4.) "THE ABILITY OF THE INDIGENT TO PRESENT HIS CLAIM"

THE PLAINTIFF IS AN INDIGENT PRISONER, WITH NO LEGAL TRAINING, SUBSEQUENT AMENDMENTS OF COMPLAINTS TO CURE DEFICIENCIES AS WELL AS TARDY RESPONSES TO MOTIONS FILED BY DEFENDANTS ARE EXAMPLES OF THIS FACT. A FACTOR THAT HAS SUPPORTED THE APPOINTMENT OF COUNSEL. SEE, WHISENANT V. YUAM, 739 F.2d 160, 163 (4TH CIR. 1984).

IN ADDITION, I AM CONFINED TO ADMINISTRATIVE - SEGREGATION WITH VERY LIMITED ACCESS TO LEGAL MATERIALS, IN ORDER FOR ME TO ACCESS LEGAL MATERIALS, I MUST SUBMIT WRITTEN REQUEST FOR SPECIFIC MATERIALS, HOWEVER, I CAN'T EFFECTIVELY DO SO BECAUSE I LACK ACCESS TO THE VERY LEGAL MATERIAL THAT WOULD ADVISE ME OF EXACTLY WHAT LEGAL MATERIAL I NEED, IN WHICH OPPRESSES ME FROM PROPERLY PETITIONING TO THE COURT -

(CONT)

SEE, RAYES V. JOHNSON, 969 F.2d 700, 703-04 -
(8TH CIR. 1992), CITING LACK OF READY ACCESS TO
LAW LIBRARY AS A SUPPORTING FACTOR IN NUMEROUS
APPOINTMENT OF COUNSEL.

5.) "MERIT OF CASE"

THE PLAINTIFF'S CLAIMS, IF PROVED, CLEARLY WOULD
ESTABLISH STATUTORY VIOLATIONS AND CONSTITUTIONAL
DENIALS. SEE, HUDSON V. MC MILLIAN, — U.S. —, 112 S. CT. -
995, 1000 (1992). THE CLAIMS OF DENIALS OF MEDICAL
CARE AMOUNTS TO DELIBERATE INDIFFERENCE, SEE, -
ESTELLE V. GAMBLE, 429 U.S. 97, 105, 97 S. CT 285 (1976).
ON ITS FACE, THIS IS A MERITIOUS CASE.

FOR THE FOREGOING REASON, THIS HONORABLE COURT
SHOULD IN ALL DUE RESPECT SUBMITTED HEREIN IN SUPPORT,
GRANT THE PLAINTS MOTION TO APPOINT COUNSEL.

RESPECTFULLY SUBMITTED

DATE: 10/11/05

Jimmie Lewis
SBI #506622
DEL. CORR. CENTER
1181 PADDOCK RD
SMYRNA, DE 19977

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DR. SYLVIA FOSTER, STAFF
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PSYCHIATRIC CENTER AND
MR. GREY,

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, DO HEREBY CERTIFY ON THIS 11TH DAY
OF OCT, 2005, THAT (2) TWO TRUE AND CORRECT COPIES OF
PLAINTIFF'S JIMMIE LEWIS, MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR THE APPOINTMENT OF COUNSEL,
HAS BEEN SERVED BY U.S. MAIL TO THE FOLLOWING:

CYNTHIA G. BEAM ESQ # 2565
1001 JEFFERSON PLAZA, SUITE 202
WILMINGTON, DELAWARE 19801
ATTORNEY FOR DEFENDANT,
DR. SYLVIA FOSTER AND THE
DELAWARE PSYCHIATRIC CENTER

DATE: 10/11/05

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SBI # 506622
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PHEBE S. YOUNG #1043
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CARVEL STATE OFFICE BUILDING
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WILMINGTON, DE 19801
ATTORNEY FOR DEFENDANT(S),
ROBERT N. GRAY (MR GREY),
AND THE DELAWARE PSYCHIATRIC
CENTER

Jimmie Lewis
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JUDGE GREGORY M. SLEET
UNITED STATES DISTRICT COURT
J. CALEB BOGGS FEDERAL BUILDING
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WILMINGTON, DELAWARE 19801

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